APPENDIX

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 953-67

CAPTAIN HOWARD BRETT LEVY, *et al.*,

Plaintiff,

—v.—

ROBERT S. MCNAMARA, *et al.*,

Defendants.

Opinion and Order

Captain Howard Brett Levy, plaintiff, is a Commissioned Officer in the United States Army. He brings this action on behalf of himself and others similarly situated under Rule 23 of the Federal Rules of Civil Procedure. He requests the convocation of a three-judge court (28 U.S.C. § 2282) from which might issue a preliminary injunction to restrain the defendants from proceeding with a general court-martial scheduled to commence against him on May 10, 1967.

Argument on the issues presented was heard on April 28, 1967.

Captain Levy is charged with violation of Articles 133, 134 and 90 of the Uniform Code of Military Justice (hereinafter called "U.C.M.J."). He challenges the constitutionality of Articles 133 and 134 on grounds of vagueness in violation of the Fifth Amendment. He further asserts that Articles 133 and 134 are being utilized to prosecute or

threaten to prosecute him for exercise of rights of free expression guaranteed by the First Amendment of the Constitution. As to the charge under Article 90 of the U.C.M.J., although it deals with refusal to obey lawful orders, it too is challenged in the context of this case on grounds that it will deprive the plaintiff of his right of free expression and association under the First Amendment.

Captain Levy was a medical doctor in civilian life. He was commissioned as an officer in the United States Army Reserves on January 29, 1962 and was assigned to the Medical Corps. He was permitted to defer his active service in order to complete his resident training as a dermatologist and entered active military service on July 9, 1965. His initial and present assignment is Chief of Dermatology at the United States Army Hospital, Fort Jackson, South Carolina, where at times pertinent hereto the United States Army conducted a medical training program for Special Forces Aidmen. On or about October 11, 1966 the plaintiff Levy was directed to establish and operate a particular phase of that training program. He refused to obey that order and his refusal is the basis of the charge against him under Article 90 of the U.C.M.J. (10 U.S.C. § 890).

A second charge alleges that Captain Levy uttered disloyal statements to divers enlisted personnel at Fort Jackson with the design to promote disloyalty and disaffection among the troops. This charge was brought under Article 134 of the U.C.M.J. (10 U.S.C. § 934).

The foregoing charges were preferred against the plaintiff on December 23, 1966 by Captain Levy's Commanding Officer, Colonel Henry F. Fancy. The charges were forwarded to the Commanding General of the United States Training Center, Fort Jackson, South Carolina, with a

recommendation of trial by general court-martial. Thereafter various investigations and preliminary procedures were carried out under Article 32 of the U.C.M.J. (10 U.S.C. § 832). As a result of this investigation three additional charges were brought against Captain Levy. Substantially these three additional charges relate to disloyal and disrespectful statements allegedly made by Captain Levy to various enlisted personnel based upon his views as to the conduct of the war in Vietnam. Two such charges were brought under Article 133 of the U.C.M.J. (10 U.S.C. § 933) ("conduct unbecoming an officer and gentleman") and the third was based on Article 134, supra, a general article covering all disorders and conduct deemed prejudicial to the Armed Forces. The particular statutes relevant to these proceedings and charged as being unconstitutional are attached as Appendix A.

On March 3, 1967 the Commanding General of the United States Army Training Center, Fort Jackson, South Carolina issued an order convening the court-martial on the several charges levied against Captain Levy. This court-martial is scheduled to begin May 10, 1967.

The defendants oppose both the motion for a preliminary injunction and convening of a three-judge court as sought by the plaintiff. They assert *inter alia* that a three-judge court is clearly unwarranted since this Court lacks jurisdiction over the subject matter of the action and no substantial constitutional issue is presented.

The initial question before the Court is whether it has jurisdiction of the subject matter.

The Congress has taken great care to define the rights of those subject to military law and to provide a complete system of appellate review within the military system to secure those rights. Within this framework, however, it is

acknowledged that courts-martial are not designed to provide the same protection of the rights of the individual as is provided in the civilian courts. Out of necessity, as Congress has recognized, " . . . [T]he military system must emphasize the iron hand of discipline more than it does the even scales of justice." *Reid* v. *Covert,* 354 U.S. 1 (1957).

Historically, Federal courts recognizing the doctrine of separation of powers and exhaustion of remedies doctrines, have treated petitions for injunctions of court-martial proceedings as exceeding the Court's jurisdiction. It has been the reiterated policy that "[T]he courts cannot command or regulate the Army." *Reaves* v. *Ainsworth,* 219 U.S. 296, 306 (1910). As stated in *Burns* v. *Wilson,* 346 U.S. 137 at 140 (1953):

> "Military law, like state law, is a jurisprudence which exists separate and apart from the law which governs in our federal judicial establishment. This Court has played no role in its development; we have exerted no supervisory power over the courts which enforce it; the rights of men in the armed forces must perforce be conditioned to meet certain overriding demands of discipline and duty, and the civil courts are not the agencies which must determine the precise balance to be struck in this adjustment. The Framers expressly entrusted that task to Congress."

This policy has been emphasized by the Supreme Court in *Orloff* v. *Willoughby,* 345 U.S. 83 at 93 (1953), a case involving a habeas corpus petition by an Army doctor. Therein the Court declared:

> "We know that from top to bottom of the Army the complaint is often made, and sometimes with justifica-

> tion, that there is discrimination, favoritism or other objectionable handling of men. But judges are not given the task of running the Army. The responsibility for setting up channels through which such grievances can be considered and fairly settled rests upon the Congress and upon the President of the United States and his subordinates. The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters."

Recently, our Court of Appeals in *Luftig* v. *McNamara, et al.*, C.A.D.C. No. 20,129, Feb. 6, 1967, applied the principles cited above. There a lawfully inducted private in the U. S. Army sought to enjoin the Secretary of Defense from sending him to Vietnam. The Court stated:

> "It is difficult to think of an area less suited for judicial action than that into which Appellant would have us intrude. The fundamental division of authority and power established by the Constitution precludes judges from overseeing . . . the use and disposition of military power; these matters are plainly the exclusive province of Congress and the Executive."

It is significant that the plaintiff has not shown any instance of the issuance of an injunction to interfere and prevent the conduct of a court-martial proceeding.

Plaintiff will have ample opportunity to raise his contentions in the manner provided by the U.C.M.J. The fact that the court-martial has neither considered nor had the opportunity to consider the plaintiff's claim precludes the

Court from acting to circumvent established procedures. *Wales* v. *Whitney*, 114 U.S. 564 (1885); *Gusik* v. *Schilder*, 340 U.S. 128 (1950); *Beard* v. *Stahr*, 370 U.S. 41 (1962). The exhaustion of remedies doctrine applied to Military tribunals is analogous to that applicable to State court proceedings. In *Gusik* v. *Schilder*, 340 U.S. 128 (1950) the Court said at page 131:

> "If Article 53 had been in force when the habeas corpus proceedings were instituted, the District Court would not have been justified in entertaining the petition unless the remedy afforded by the Article had first been exhausted. An analogy is a petition for habeas corpus in the federal court challenging the jurisdiction of a state court. If the state procedure provides a remedy, which though available has not been exhausted, the federal courts will not interfere. This is not only the holding of the Court in a long line of cases [citing cases]; it is the rule which Congress recently wrote into the Judicial Code. 28 U.S.C. § 2254, 28 U.S.C.A. § 2254."

While these cases do not deal specifically with application for convening a three-judge court, the principles enunciated do speak loudly for the proposition that this Court has no jurisdiction, by way of a three-judge court or otherwise, to interfere with the operation of the military.

The plaintiff seeks to avoid the force of these precedents by relying on *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965) and as applied by our own Court of Appeals in *Reed Enterprises* v. *Corcoran*, 354 F.2d 519 (D.C. Cir. 1965). These decisions have no force on the subject matter before

the Court in the instant case. In both *Dombrowski* and *Reed* there was never any question that the Court possessed jurisdiction over the subject matter of the actions. There the sole question was whether the case presented a substantial constitutional question, whether injunctive relief was necessary, and whether there was a case or controversy.

This opinion constitutes the findings of fact and conclusions of law of the Court.

In the light of such findings and conclusions, it is this 3rd day of May, 1967,

ORDERED that the petition for a preliminary injunction and convening of a three-judge court is denied.

H. F. CORCORAN
Judge

Appendix A Attached to Opinion and Order

Statutes Involved

Article 90, U.C.M.J., 10 U.S.C. 890, provides:

§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer.

Any person subject to this chapter who—

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct. . . .

Article 133, U.C.M.J., 10 U.S.C. 933, provides:

§ 933. Art. 133. Conduct unbecoming an officer and a gentleman.

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct. . . .

Article 134, U.C.M.J., 10 U.S.C. 934, provides:

§ 934. Art. 134. General article.

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. . . .

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,972—September Term, 1966

Civil 953-67

CAPTAIN HOWARD BRETT LEVY, for himself and for all others similarly situated,

Petitioner,

v.

HONORABLE HOWARD F. CORCORAN, United States District Judge,

Respondent.

Before:

BAZELON, *Chief Judge;* and
TAMM and LEVENTHAL, *Circuit Judges.*

Order

This cause came on for hearing on petitioner's petition for writ of mandamus and application for a stay and said petition and application were argued by counsel.

Upon consideration whereof, it is

ORDERED by the court that petitioner's aforesaid petition for writ of mandamus and application for a stay are denied.

Per Curiam.

Chief Judge Bazelon dissents from the foregoing order for the reasons stated in his dissenting opinion filed herewith.

TAMM, *Circuit Judge.* I join in denying the application for the stay and the petition for writ of mandamus. I am of the view that this case is not properly before this court at the present time. I am of the opinion that the record discloses that our present petitioner has an adequate remedy at law. It is my view that he cannot at this time show imminent, irreparable injury. In the event of his conviction by a court martial, which at this time is problematical, there is then available to him, through court martial proceedings, review of those proceedings as specifically provided by law, including an ultimate appeal to the United States Court of Military Appeals, which is in itself a court entirely composed of civilians and which court within the last week has ruled that the principles of the Supreme Court's holding in the *Miranda* case are applicable to court martial proceedings. *United States* v. *Tempia,* 35 L. W. 2625 (April 25, 1967).

In addition, there is available to this petitioner, in due course and if he is convicted, the right of appeal to the civil courts through habeas corpus or other appropriate proceedings.

Against this background, I feel that at this time this court is without any jurisdiction in this matter.

LEVENTHAL, *Circuit Judge*: The refusal of the District Judge to take steps to convene a three-judge court seems to me sound for want of equity jurisdiction to restrain de-

fendants from proceeding with a general court-martial schedule to commence May 10, 1967.

The lack of equity jurisdiction to issue an injunction seems to me to inhere in the relationship of the civil courts and military tribunals, a relationship which looks to habeas corpus or kindred remedies as the technique by which the civil courts exercise such limited intervention as may be proper in cases taken before military tribunals. There may be want of equity jurisdiction for such reasons of governmental relationships even where there is no truly adequate remedy at law.[1] But the conclusion is strengthened by our awareness that petitioner can preserve his constitutional defenses before the general court-martial, and in due course can present them to the Court of Military Appeals. That court has indicated its readiness to apply to men in the military service the protection of pertinent Supreme Court decisions based on constitutional grounds.[2]

These considerations do not wholly answer petitioner's contention that the ability of the military to use the broad provisions of articles 133 and 134 of the Uniform Code of Military Justice (10 U.S.C. §§ 933, 934) to punish expressions of views within the continental United States forebodes such a "chilling effect" on speech that is protected by the Constitution as to call for the application of *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965).

The argument is not without logic. Where it breaks down, it seems to me, is where it runs into a judicial tradition which for more than 150 years has resisted all efforts to issue mandates intended to obviate exposure to court-

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[1] *Smith* v. *Katzenbach*, 122 U. S. App. D. C. 113, 351 F. 2d 810 (1965).

[2] *United States* v. *Tempia*, April 25, 1967.

martials or anticipate the results of proceedings before military tribunals.[3]

It is not necessary to consider now whether this pattern of decisions is absolutely inviolate. It is formidable enough to obviate injunctive relief based on an expansion of the implications of *Dombrowski*. Notwithstanding the language of *Dombrowski*, some individuals and groups will be denied injunctions and relegated to protecting their First Amendment freedoms by way of defense in other proceedings.[4] Furthermore, I cannot accept petitioner's argument that a court should be as ready to enjoin the proceeding of a military tribunal as a Federal court to enjoin a state court proceeding.

Freedoms of speech and expression stand on the highest constitutional ground. And the fact of war does not obliterate freedom to dissent from the war. It may be assumed at least for discussion that although the balance between freedom and discipline is different for men in the military service than for civilians, at least some part of these freedoms is retained when civilians enter the military service. It may further be assumed that if these freedoms are unlawfully disregarded by military tribunals, there may in due course be recourse to the civil courts. But that does not compel this recourse to be by way of injunctive relief.

Whether the foregoing decision was reserved by Congress for three judges, rather than one, is not an easy question. It suffices to say that when the district judge is presented with a motion that is insubstantial insofar as it requests injunctive relief, the law does not contemplate a

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[3] *Wales* v. *Whitney*, 114 U. S. 564 (1885); *Gusik* v. *Schiller*, 340 U. S. 128 (1950); *Beard* v. *Stahr*, 370 U. S. 41 (1962); *Gorko* v. *Commanding Officer*, 314 F. 2d 858 (10th Cir. 1963).

[4] *W. E. B. DuBois Clubs* v. *Katzenbach*, Civil Action 1087-66, April 18, 1967 (Dist. Ct. Dist. of Col., 3-judge).

three-judge court. The district judge can preclude a three-judge court only when it is clear that injunctive relief is not available. I think this is such a case.

BAZELON, *Chief Judge*, dissenting: Petitioner filed his papers at 5:00 p.m. yesterday evening. The Government filed its response at 11:00 a.m. today, and we heard this case at 11:45 a.m. Consequently, there has not been sufficient time for the consideration which the case deserves. However, as presently advised, I am compelled to dissent from the order issued today.

On September 10, 1965, Captain Howard Brett Levy wrote a letter to Sergeant Geoffrey Hancock, Jr. who was then stationed in Viet Nam. The letter strongly, and perhaps intemperately, criticized the foreign policy of the United States. Between February and December, 1966, Captain Levy made similar criticisms to various military personnel at his hospital base in South Carolina. On the basis of these two incidents, Levy's commanding officer charged him with violating Article 133 ("conduct unbecoming an officer and a gentleman") and Article 134 ("all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, . . . ") of the Uniform Code of Military Justice. 10 U.S.C. §§ 933, 934 (1964). Levy was also charged with a violation of Article 90 (wilfully disobeying "a lawful command of his superior commissioned officer").[1]

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[1] Apparently Levy would not give Special Forces Aidmen instruction in dermatology because the instruction would have involved exposing the private parts of his female patients who were suffering from venereal diseases. Levy thought this exposure, without the consent of the patients, violated professional ethics.

10 U.S.C. § 890 (1964). The court martial, at which Levy faces the possibility of a life sentence, begins tomorrow.

Levy claims that Articles 133 and 134 are unconstitutionally vague and that Article 90 is unconstitutional as applied to him. On April 17, 1967, he moved in our District Court to have a three-judge District Court convened to decide the question and to issue an injunction against his pending court martial. On May 3, the District Court denied the motion.

Under *Idlewild Bon Voyage Liquor Corporation* v. *Epstein,* 370 U.S. 713 (1962), a three-judge District Court must hear and determine the case when (1) "the constitutional question raised is substantial" and (2) "the complaint at least formally alleges a basis for equitable relief." 370 U.S. at 715.

Recent cases in this Circuit have interpreted the first requirement to mean that the constitutional claim must be "patently frivolous" before one judge can dispose of it. *Reed Enterprises* v. *Corcoran,* 122 U.S. App. D.C. 387, 390, 354 F.2d 519, 522 (1965); *Hobson* v. *Hansen,* 252 F.Supp. 4, 7 (D.D.C. 1966). Levy argues that Articles 133 and 134 are overly broad, and that their breadth impermissibly impinges upon First Amendment freedoms. A simple reading of the Articles shows that they are quite broad. Indeed, the Manual for Courts-Martial interprets Article 134 to include more than fifty different offenses ranging from abusing public animals to wearing an unauthorized insignia.[2] Levy argues also that Article 90, though not un-

[2] One of the evils of an overly broad statute is that it leaves the definition, and therefore the creation, of crimes to the discretion of minor executive or military officials. The attached appendix (the Manual's suggested forms for drafting charges and specifications under Article 134) shows exactly how broad the discretion is. And the suggested forms do not purport to be exclusive.

constitutional on its face, is being applied as part of a scheme to punish him for exercising his First Amendment rights in the past and prevent him from exercising them in the future.[3] For our present purposes we must take these allegations as true. And if they are true, the constitutionality of Article 90, as applied to Levy, is questionable. *Dombrowski* v. *Pfister*, 380 U.S. 479, 490 (1965).

The second requirement for convening a three-judge court is that the complaint allege a basis for equitable relief. Here Levy says that First Amendment rights will be "chilled" if his prosecution proceeds on the basis of two statutes which are unconstitutional on their face and one which is being applied in order to harass people who exercise their First Amendment rights.[4] This chilling effect, Levy claims, constitutes irreparable injury under *Dombrowski* v. *Pfister*, supra. If Article 90, though constitutional on its face, is being applied to harass Levy, then that part of his case fits within the first ground for the *Dombrowski* decision. 380 U.S. at 490. And if Articles 133 and 134 are unconstitutionally broad then that part of Levy's case fits within the second ground for the *Dombrowski* decision. 390 U.S. at 490-491.

Of course all of this assumes that *Dombrowski* would be read to allow interference with military courts. The *Dombrowski* opinion itself suggests no reason why it should not be read in this way, though there may be other rea-

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[3] He alleges, among other things, that at first his commanding officer decided upon a minor form of non-judicial discipline and that only after he learned of Levy's political opinion was the court martial decided upon.

[4] The problem concerns not only Levy's First Amendment rights but also the First Amendment rights of others, both military personnel and civilians, who may view Levy's court martial as governmental dissatisfaction with dissent.

sons why its scope would be limited. In any event, the applicability of *Dombrowski* to our case has never been decided and is not a frivolous issue.[5]

Since neither the constitutional attack on the Articles nor the claim of irreparable injury is frivolous, this case should be heard and determined by a three-judge District Court. I think this much is abundantly clear. If Levy does have a right to have his case heard and determined by a three-judge District Court, then I think it is equally clear that the right must be made meaningful by a short stay of the court martial proceedings. Otherwise, with the beginning of the court martial tomorrow morning, the three-judge District Court would be left with a moot case.

These questions, whether the statutes are unconstitutional, whether there is irreparable injury, whether *Dombrowski* applies to military courts, are not easy, and they are not made any easier by the extreme time-pressure which confronts us. Moreover, they are not questions for us. They are for a three-judge District Court. I do not intimate any view on the merits. I would grant a short stay simply to preserve the jurisdiction of the three-judge District Court. Once that court is convened it can decide whether to issue a temporary restraining order or a temporary injunction while it considers the merits. Our responsibility is simply to preserve jurisdiction for the court Congress intended to hear this case.

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[5] The cases cited in Footnote 3 of Judge Leventhal's opinion do not deal with statutes which impinge upon First Amendment rights.

APPENDIX ATTACHED TO ORDER

ARTICLE 134

Abusing public animal

118. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully (kick a public horse in the belly) (.....).

Adultery

119. In that ..... (, a married man,) did, (at) (on board) ....., on or about ..... 19...., wrongfully have sexual intercourse with ....., (a married woman) (a woman) not his wife.

Assault:

—Indecent

120. In that ..... did, (at) (on board) ....., on or about ..... 19...., commit an indecent assault upon ..... by ....., with intent to gratify his (lust) (sexual desires).

—Upon a commissioned officer

121. In that ..... did, (at) (on board) ....., on or about ..... 19...., assault ....., a commissioned officer of [the Army of the United States] [....., a friendly foreign power] [the United States (Navy) (Marine Corps) (Air Force) (Coast Guard)], by .....

NOTE.—That the accused did not know the commissioned officer to be such is a defense to this kind of assault—but not to an included assault in which the official position of the victim is immaterial.

—Upon a warrant, non-commissioned, or petty officer

122. In that ..... did, (at) (on board) ....., on or about ..... 19...., assault ....., a (warrant) (noncommissioned) (petty) officer of [the Army of the United States] [the United States (Navy) (Marine Corps) (Air Force) (Coast Guard)], by .....

NOTE.—That the accused did not know the warrant, etc., officer to be such is a defense to this kind of assault—but not to an included assault in which the official position of the victim is immaterial.

—Upon a person in the execution of police duties

123. In that ..... did, (at) (on board) ....., on or about ..... 19...., assault ....., a person then having and in the execution of (air police) (military police) (shore patrol) (civil law enforcement) duties, by .....

—With intent to commit certain offenses

124. In that ..... did, (at) (on board) ....., on or about ..... 19...., with intent to commit (murder) (voluntary manslaughter) (rape) (robbery) (sodomy) (arson) (burglary) (housebreaking), commit an assault upon ..... by .....

Assault (consummated by a battery) upon a child under the age of 16

125. In that ..... did, (at) (on board) ....., on or about ..... 19...., unlawfully (strike) (.....) ....., a child under the age of sixteen years, (in) (on) the ..... with .....

Bigamy

126. In that ..... did, at ....., on or about ..... 19...., wrongfully and bigamously marry ...., having at the time of his said marriage to .... a lawful wife then living, to wit: .....

Bribery and graft:

—Asking, etc.

127. In that ....., being at the time (a contracting officer for .....) (the personnel officer of ....) (.....), did, (at) (on board) ....., on or about ..... 19...., wrongfully and unlawfully (ask) (accept) (receive) from ....., (a contracting company engaged in .....) (.....), (the sum of $.....) (....., of a value of about $..... .....) (.....), [with intent to have his (decision) (action) influenced with respect to] [(as compensation for) (in recognition of) services (rendered) (to be rendered) (rendered and to be rendered) by him the said ..... in relation to] an official matter in which the United States was and is interested, to wit: (the purchasing of military supplies from .....) (the transfer of ..... to duty with .....) (.....).

—Promising, etc.

128. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully and unlawfully (promise) (offer) (give) to ....., (his commanding officer) (the claims officer of .....) (.....), (the sum of $.....) (....., of a value of about $.....) (.....), [with intent to influence the (decision) (action) of the said ..... with respect

to] [(as compensation for) (in recognition of) services (rendered) (to be rendered) (rendered and to be rendered) by the said ..... in relation to] an official matter in which the United States was and is interested, to wit: (the granting of leave to .....) (the processing of a claim against the United States in favor of .....) (.....).

Check, worthless, making and uttering

129. In that ..... did, (at) (on board) ....., on or about ..... 19...., [with intent to deceive, wrongfully and unlawfully] make and utter to ..... a certain check, in words and figures as follows, to wit: ....., (in payment of a debt in the amount of $.....) (for .....) [, he, the said ....., then not intending to have sufficient funds in the ..... bank available to meet payment of said check upon its presentment for payment in due course], and did thereafter wrongfully and dishonorably fail to (place) (maintain) sufficient funds in (the .....) (said) bank for payment of such check upon its presentment for payment.

NOTE.—Both allegations inclosed in brackets should be used in a case in which the accused had given the check in purported payment of a debt not intended to have sufficient funds in the bank available to meet payment upon presentment in due course, but had not thereby obtained any money, personal property, or article of value. Obtaining money, personal property, or an article of value by means of giving a check, without intending to have sufficient funds in the bank available to meet payment upon presentment in due course, may be charged as larceny or wrongful appropriation, as the case may be, in violation of Article 121 (see 200). Without the material in brackets, this specification may be used to denounce merely a wrongful and dishonorable failure to place or maintain sufficient funds in the bank for payment of the check.

Debt, failing to pay

130. In that ....., being indebted to ..... in the sum of $..... for ....., which amount be-

came due and payable (on) (about) (on or about) ...., did, (at) (on board) ....., from ..... 19.... to ..... 19...., wrongfully and dishonorably fail to pay said debt.

Disloyal statements

131. In that ....., did, (at) (on board) ....., on or about ..... 19...., with design to [promote (disloyalty) (disaffection) (disloyalty and disaffection) among (the troops) (the civilian populace) (the troops and the civilian populace)] [.....], publicly utter the following statement, to wit: "....."", or words to that effect, which statement was disloyal to the United States.

Disorderly, drunkenness, etc.:

—In command, quarters, etc., or under service discrediting circumstances

132. In that ..... was, (at) (on board) ....., on or about ..... 19...., (drunk) (disorderly) (drunk and disorderly) [in (command) (quarters) (station) (camp) (.....)] [on board ship] [in uniform in a public place, to wit: .....] [.....].

—Drinking liquor with prisoner

133. In that ....., a (sentinel) (.....) in charge of prisoners, did, (at) (on board) ....., on or about ..... 19...., unlawfully drink intoxicating liquor with ....., a prisoner under his charge.

—Drunk, prisoner found

134. In that ....., a prisoner, was, (at) (on board) ....., on or about ..... 19...., found drunk.

—Incapacitating oneself for performance of duties through prior indulgence in intoxicating liquors

135. In that ..... was, (at) (on board) ....., on or about ..... 19...., as a result of previous indulgence in intoxicating liquor, incapacitated for the proper performance of his duties.

Drugs, habit forming, or marihuana:

—Wrongful possession

136. In that ..... did; (at) (on board) ....., on or about ..... 19...., wrongfully have in his possession ..... ounces, more or less, of (a habit forming narcotic drug, to wit: .....) (marihuana).

—Wrongful use

137. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully use (a habit forming narcotic drug, to wit: .....) (marihuana).

False or unauthorized pass, making, etc.

138. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully [and falsely (make) (forge) (alter by .....) (counterfeit) (tamper with by .....)] [sell to .....] [give to .....] [(use) (have in his possession) with intent to (defraud) (deceive)] (a certain instrument purporting to be) (a) (an) (another's) (naval) (military) (official) (pass) (permit) (discharge certificate) (.....) in words and figures as follows: ....., [he, the said ....., then well knowing the same to be (false) (unauthorized) (.....)].

False swearing

139. In that ..... did, (at) (on board) ....., on or about ..... 19...., (in an affidavit) (in his testimony before a ..... court-martial at the trial of .....) (in .....) wrongfully and unlawfully (make) (subscribe) under lawful (oath) (affirmation) a statement in substance as follows: ....., which statement he did not then believe to be true.

Firearm, discharging:

—Through carelessness

140. In that ..... did, (at) (on board) ....., on or about ..... 19...., through carelessness, discharge a (service rifle) (.....) in the (squadroom) (tent) (barracks) (..... compartment) (.....) of .....

—Willfully, under such circumstances as to endanger life

141. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully and willfully discharge a firearm, to wit: ....., (in the mess hall of .....) (.....), under circumstances such as to endanger human life.

Fleeing scene of accident

142. In that ....., being (the driver of) (a passenger in) (the senior officer in) a vehicle at the time of (an accident) (a collision), did, at ....., on or about ..... 19...., wrongfully and unlawfully leave the scene of the (accident) (collision) without [rendering assistance to ..... who had been struck (and injured) by the said vehicle] [making his identity known].

Gambling with subordinate

143. In that (Sergeant) (.....) ..... (, boatswain's mate, first class, U. S. Navy,) (, ...), did, (at) (on board) ....., on or about ..... 19...., gamble with (Private) (.....) ..... (, seaman apprentice, U. S. Navy) (, ...).

Homicide, negligent

144. In that ..... did, (at) (on board) ....., on or about ..... 19...., unlawfully kill ....., [by negligently ..... the said ..... (in) (on) the ..... with a .....] [by driving a (motor vehicle) (.....) against the said ..... in a negligent manner] [.....].

Impersonating an officer, etc.

145. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully and unlawfully impersonate an [(officer) (warrant officer) (noncommissioned officer) (petty officer) (agent or superior authority) of the (Army) (Navy) (Marine Corps) (Air Force) (Coast Guard)] [an official of the Government of .....] by [publicly wearing the uniform and insignia of rank of a (lieutenant of the .....) (.....)] [showing the credentials of .....] [.....] (with intent to defraud ..... by .....).

Indecent acts with a child

146. In that ..... did, (at) (on board) ....., on or about ..... 19...., [take (immoral) (improper) (indecent) liberties with] [commit a (lewd) (lascivious) act (upon) (with) the body of] ....., a (female) (male)

under sixteen years of age, by [fondling (her) (him) and placing his hands upon (her) (his) leg and private parts] [.....], with intent to (arouse) (appeal to) (gratify) the (lust) (passions) (sexual desires) of the said .... and .....).

Indecent exposure

147. In that ..... did, (at) (on board) ....., on or about ..... 19...., while (at a barracks window) (.....) willfully and wrongfully expose in an indecent manner to public view his .....

Indecent, insulting, or obscene language communicated by a male to a female

148. In that ..... did, (at) (on board) ....., on or about ..... 19...., (orally) (in writing) communicate to ....., a female, certain (indecent) (insulting) (obscene) language, to wit: .....

Indecent, lewd acts with another

149. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully commit an indecent, lewd, and lascivious act with ..... by ....

Loaning money at usurious rate

150. In that ..... (, for and in behalf of one ....,) did, (at) (on board) ....., on or about ..... 19...., loan to ..... $....., under an agreement whereby he, the said ....., was to receive for the use of said money for ..... (months) (days) [interest at the rate of ..... per cent per

(annum) (month)] [the sum of $ .....], thereby (demanding) (receiving) (demanding and receiving) an usurious and unconscionable rate of interest for said loan.

Mail, taking, opening, etc.

151. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully and unlawfully take (a) certain [letter(s)] [postal card(s)] [package(s)], addressed to ....., [out of the (..... Post Office .....) (orderly room of .....) (unit mail box of .....) (.....)] [from .....] before (it) (they) (was) (were) (delivered) (actually received) (to) (by) the person(s) to whom (it) (they) (was) (were) directed, with design to [obstruct the correspondence] [pry into the (business) (secrets)] of .....

152. In that ..... did, (at) (on board) ....., on or about ..... 19...., [wrongfully and unlawfully (open) (secrete) (destroy)] [steal] (a) certain [letter(s)] [postal card(s)] [package(s)], addressed to ....., which said [letter(s)] [.....] [(was) (were) then [in the (..... Post Office .....) (orderly room of .....) (unit mail box of .....) (custody of .....) (.....)] [on the (bunk of .....) (.....)]] [had previously been committed to ...., (a representative of .....,) an official agency for the transmission of communications,] before said [letter(s)] [.....] (was) (were) (delivered) (actually received) (to) (by) the person(s) to whom (it) (they) (was) (were) directed.

Mails, depositing, etc., obscene matter in

153. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully and knowingly

(deposit) (cause to be deposited) in the (United States) (.....) mails, for mailing and delivery to ....., a (letter) (picture) (.....) (containing) (portraying) (suggesting) (.....) certain obscene, lewd, and lascivous matter, to wit: .....

Misprision of felony

154. In that ....., having knowledge that ..... had actually committed a felony (at) (on board) ....., on or about ..... 19...., to wit: (the murder of .....) (.....), did, from about ..... 19.... to about ..... 19...., wrongfully and unlawfully conceal such felony and fail to make the same known to the civil or military authorities.

Nuisance, committing

155. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully (urinate) (defecate) (.....) [on the floor of the squadroom] [on the (deck) (bulkhead) of .....] [.....].

Pandering

156. in that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully and unlawfully [(compel) (induce) (entice) (procure)] [attempt to (compel) (induce) (entice) (procure)] ..... to engage in (acts of prostitution) (sexual intercourse for hire and reward) with persons to be directed to (him) (her) by the said .....

157. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully and unlawfully [receive valuable consideration, to wit: ....., on

account of arranging for] [arrange for] (.....) (unnamed persons) to engage in (sexual intercourse) (sodomy) with ....., (a prostitute) (.....).

Parole, violation of

158. In that ....., a prisoner on parole, did, (at) (on board) ....., on or about ..... 19...., violate the conditions of his parole by .....

Perjury, statutory

159. In that ....., having taken a lawful oath [in a proceeding before (a board of officers) (a court of inquiry) concerning .....] [upon the making of an affidavit as to .....] [.....], a case in which a law of the United States authorized an oath to be administered, that [he, the said ....., would (testify) (declare) (depose) (certify) truly] [a written (declaration) (deposition) (certificate) subscribed by him was true], did, (at) (on board) ....., on or about ..... 19...., willfully and contrary to such oath (state) (subscribe) a material matter, to wit: ....., which matter he did not then believe to be true.

NOTE.—If the matter falsely stated or subscribed under lawful oath is not material, the offense should be charged as false swearing.

Perjury, subornation of

160. In that ..... did, (at) (on board) ....., on or about ..... 19...., procure ..... to commit perjury by inducing him, the said ....., to take a lawful (oath) (affirmation) in a (trial by ..... court-martial of .....) (trial by a court of competent jurisdiction, to wit: ....., of .....) (deposition for use in a trial by ..... of .....) (.....

.....) that he, the said ....., would (testify) (depose) (.....) truly, and to (testify) (depose) (.....) willfully, corruptly, and contrary to such (oath) (affirmation) in substance that ....., which (testimony) (deposition) (.....) was upon a material matter and which the said ..... and the said ..... did not then believe to be true.

Prisoner, allowing to do unauthorized act

161. In that ....., (a sentinel) (overseer) (.....) in charge of prisoners, did, (at) (on board) ....., on or about ..... 19...., wrongfully allow ....., a prisoner under his charge, to [(go to) (enter) (go to and enter) an unauthorized place, to wit: .....] [(hold unauthorized conversation with .....) (loiter) (neglect his task by .....) (obtain intoxicating liquor) (.....)].

Public record, concealing, mutilating, etc.

162. In that ..... did, (at) (on board) ....., on or about ..... 19...., willfully and unlawfully [(conceal) (remove) (mutilate) (obliterate) (destroy)] [appropriate with intent to (conceal) (remove) (mutilate) (obliterate) (destroy)] a public record, to wit: [the (descriptive list) (rough deck log) (quartermaster's note book) of .....] [.....].

Quarantine, medical, breaking

163. In that ....., having been duly placed in medical quarantine (in the isolation ward, ... Hospital) (.....), did (at) (on board) ....., on or about ..... 19...., break said medical quarantine.

Refusing, wrongfully, to testify

164. In that ....., being in the presence of a [(general) (special) court-martial] [duly appointed board of officers] [.....] of the United States, of which ..... was (law officer) (president) (.....), (and having been directed by the said ..... to qualify as a witness) (and having qualified as a witness and having been directed by the said ..... to answer the following quuestions put to him as a witness, "....."), did, (at) (on board) ....., on or about ..... 19...., wrongfully refuse (to qualify as a witness) (to answer said questions).

Restriction, breaking

165. In that ....., having been duly restricted to the limits of ....., did, (at) (on board) ....., on or about ..... 19...., break said restriction.

Sentinel, lookout, offenses against and by

166. In that ..... did, (at) (on board) ....., on or about ..... 19...., [(attempt) (threaten) to] (unlawfully strike) (assault) ....., a (sentinel) (lookout) in the execution of his duty, [(in) (on) the .....] with (a) (his) .....

167. In that ....., (a prisoner), did, (at) (on board) ....., on or about ..... 19...., wrongfully [use the following (threatening) (insulting) (threatening and insulting) language] [behave in an (insubordinate) (disrespectful) (insubordinate and disrespectful) manner] toward ....., a (sentinel) (lookout) in the execution of his duty, ["....." or words to that effect] [by .....].

168. In that ....., while posted as a (sentinel) (lookout), did, (at) (on board) ....., on or about ..... 19...., (loiter) (wrongfully sit down) on his post.

Stolen property, knowingly receiving

169. In that ..... did, (at) (on board) ....., on or about ..... 19...., unlawfully (receive) (buy) (conceal) ....., of a value of about $....., the property of ....., which property, as he, the said ....., then well knew, had been stolen.

Straggling

170. In that ..... did, at ....., on or about ..... 19...., while accompanying his organization on (a practice march) (maneuvers) (.....), without just cause, straggle.

Threat, communicating

171. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully communicate to ..... a threat to (injure ..... by .....) (accuse ..... of having committed the offense of .....) (.....).

Unclean accouterment, arms, etc.

172. In that ..... was, (at) (on board) ....., on or about ..... 19...., found with an unclean (rifle) (uniform) (.....), he being at fault in failing to maintain such property in a clean condition.

Uniform, unclean, improper, appearing in

173. In that ..... did, on or about ..... 19...., wrongfully appear (at) (on board) ..... (without his .....) (in an unclean .....) (with an unclean .....) (.....).

Unlawful entry

174. In that ..... did, (at) (on board) ....., on or about ..... 19...., unlawfully enter the (dwelling house) (garage) (warehouse) (tent) (vegetable garden) (orchard) (stateroom) (.....) of .....

Weapon, concealed, carrying

175. In that ..... did, (at) (on board) ....., on or about ..... 19...., unlawfully carry a concealed weapon, to wit: a .....

Wearing unauthorized insignia, etc.

176. In that ..... did, (at) (on board) ....., on or about ..... 19...., wrongfully and without authority wear upon his (uniform) (civilian clothing) [the insignia of grade of a (master sergeant of .....) (chief gunner's mate of .....)] [the Combat Infantryman Badge] [the Distinguished Service Cross] [the ribbon representing the Silver Star] [the lapel button representing the Legion of Merit] [.....].